

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 735 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

TOWA SALES CORPORATION

Versus

STATE OF GUJARAT

Appearance:

NANAVATY ADVOCATES for Petitioner

MS. HARSHA DEVANI, AGP, for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 28/02/2000

ORAL JUDGEMENT

The petitioner-company seeks a direction on the respondent to declare the petitioner as a successful bidder and to set aside the tender notice issued for the same item by the respondent No. 2. The petitioner is in the business of trading and indenting of ophthalmological

equipment in the name and style of its parent Company, M/s. Towa Optics (India) Pvt. Ltd. The respondent No. 2 published an enquiry inviting tenders for 30 operating ophthalmology microscopes and 13 keratometers. In response to this invitation, the petitioner made an offer on 5.10.1999. As per the tender conditions, tender offers were to constitute two parts namely a technical bid and a commercial bid. The technical bid was opened on 13.10.1999 and 4 out of 8 bidders were selected for the commercial bidding including the petitioner. According to the petitioner, in the commercial bid the price quoted by the petitioner was lowest. The petitioner had raised an objection on 7.12.1999 before the respondent No. 2 as regards the tender offer of the respondent No. 5 alleging that its offer was irregularly made. The petitioner made another representation in this regard on 14.12.1999. After the representations the petitioner was called to make demonstration on 24.12.1999 which was carried out by the petitioner in presence of the Technical Committee of the respondent No. 2 consisting of five persons. The petitioner thereafter again informed by its letter dated 14.1.2000 to the respondent No. 2 that the technical features of petitioner's product were meeting the tender specifications and were successfully demonstrated before the Technical Committee of the respondent No. 2. Further representation was made by the petitioner on 21.1.2000. The petitioner thereafter came to know that the respondent No. 2 had reinvited tender of the said ophthalmology microscope by tender notice dated 15.2.2000. The petitioner was not even informed as to the outcome of the earlier tender.

It is contended on behalf of the petitioner-company in this background, that the respondent was estopped in law from reinviting the tenders in contravention of the known principles of acceptance of tenders. It is also contended that the exercise seems to have been undertaken with a view to favour someone else at the cost of the petitioner. From the affidavit in reply which is filed by the respondent No. 2 it was pointed out that the ground for reinviting tenders that was now put forth by the respondent was that demonstration was held after the commercial bids were opened and were being considered. It was submitted that clause 7 of the tender document shows that the tenderers shall have to give demonstration of the equipment offered as and when demanded at their expense failing which the tender will be rejected. It was submitted that it was not specified in the said clause that no demonstration of the equipment could be done after the commercial bids

were opened and during the consideration of the commercial bids and that such a stand taken up by the respondents was arbitrary and violative of the fundamental right of the petitioner guaranteed under Article 14 of the Constitution. Relying on the decision of the Supreme Court in A.P. Aggarwal Vs. Government of N.C.T. of Delhi reported in 2000(1) SCC 600 it was contended that crux of Article 14 and the basic rule of law was that every State action, in order to survive, must not be susceptible to the vice of arbitrariness.

The main grievance is against reinviting of tenders for the same item which according to the petitioner has been done arbitrarily. In this regard clause 30 of the Tender Document is material and is therefore reproduced hereunder.

"Director, C.M.S.O., Gandhinagar reserves the right to consider or reject any or all tenders or close the tender enquiry without assigning any reason, at any time, at any stage."

In part II of the tender document relating to Verification, Undertaking etc. (Annexure-D collectively at page 70) the tenderer declared that it had carefully read and understood the terms and conditions stated in the tender form and that it shall abide by all those conditions. Therefore, condition No. 30 under which the Director had reserved his right to consider or reject any or all tenders or close tender enquiry without assigning any reason, at any time, at any stage, was agreed to by the petitioner and other tenderers. Therefore, when all the tenders stood rejected by virtue of reinviting tenders, Clause 30, to which contractual term the petitioner had agreed, would prevent the court from making an enquiry into the causes of rejection of all the tenders.

Apart from this aspect, the ground which is put forth by the respondent No. 2 in its affidavit in reply is that the technical bids were already opened on 13.10.1999 and technical scrutiny of the machines was carried out on 16.11.1999. Thereafter the commercial bids were opened on 1.12.1999. The representations were made by the petitioner after the opening of the commercial bid and on the petitioner's representations, demonstration was arranged. It is stated that the decisions concerning purchase of more than Rs. 75 lakhs were to be taken by the "Secretaries' Purchase Committee" and therefore the Director, CMSO, prepared an agenda note with respect to the purchase of ophthalmology microscopes

and placed it before the Secretaries Purchase Committee for taking suitable action. Names of the members of the Secretaries Purchase Committee are given in paragraph 11 of the affidavit in reply. That Committee while considering the agenda item relating to operating ophthalmology microscope took the following decision:-

"Item No. 6: Ophtalmology operating Microscopes
(F-52) - 30 Nos.

The Committee discussed the agenda note and other relevant details submitted by C.M.S.O. The Committee observed that the demonstration of equipments taken by a team constituted by C.M.S.O. after scrutinising the technical bid and opening of Commercial Bids was a deviation of procedure. Also the representation made by second lowest after opening of commercial bid cannot be accepted, if technical team had recommended the equipment. The Committee viewed that any decision either on first lowest or second lowest would invite litigations and therefore, the Committee viewed to close the present proposal and directed to invite new tenders."

It was submitted by the learned A.G.P. appearing for the respondents that the decision to call for demonstration was taken after the commercial bids were opened. It was argued that the technical bids were already opened and technical scrutiny was carried out on 16.11.1999. It was submitted that, in fact, when the demonstration was made after the commercial bids were opened that was at the instance of the petitioner who had made representations.

As noticed above, from the minutes of the Secretaries' Purchase Committee, this procedure was found to be objectionable by the Committee which was of the opinion that when the Technical Committee had already made its recommendation and commercial bids were opened such deviation of procedure of holding demonstration was not acceptable. It will not be open for the court to go behind the wisdom which weighed the Committee more particularly in view of Clause 30 of the Tender Document which enabled the Director, CMSO, to reject any or all tenders. Since no tender was accepted, as is implied from the reinvitation of the tenders, such a course was within the ambit of Clause 30 of the Tender Document. The action of the respondents was therefore as per the contractual terms and cannot therefore be said to be

arbitrary so as to violate Article 14 of the
Constitution. The petition is, therefore, rejected.
Notice is discharged with no order as to costs.

(R.K. ABICHANDANI, J)

(pkn)